



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

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**CORRESPONDENCE/MEMORANDUM  
OFFICE OF LEGAL COUNSEL**

DATE: May 4, 2010

TO: Marvel Lemke, Chairperson, Electronic Recording Council

FROM: Mark A. Herman, Assistant Legal Counsel, DOA

RE: Electronic Recording of Transportation Project Plats

**ISSUE AND BACKGROUND**

I have been asked to review whether a register of deeds must assign volume and page numbers when electronically recording Transportation Project Plats (TPP). I conclude that where a county is subject to Chapter 228 of the Wisconsin Statutes the answer is clearly, “no.” Where a county is not subject to Chapter 228, and has not elected to be subject to it, I conclude that it is unnecessary to create a volume or page number, to the extent that doing so would not be meaningful when documents are maintained in an electronic format.

**ANALYSIS**

A register of deeds is generally required to, “assign a document number and volume and page of recording” when receiving a TPP.<sup>1</sup> Currently, the Council is reviewing an electronically formatted TPP recording system. The Council is reviewing the system under its authority to promote the electronic recording of documents, as provided for by Wisconsin Statutes § 706.25.<sup>2</sup> The system as constructed assigns document numbers, but is not configured to assign volume or page numbers. When recording in an electronic format volume or page numbers are presumably superfluous.

Wisconsin Statutes § 59.43 allows registers of deeds to substitute other systems of indexing recorded documents in place of volume and page number.<sup>3</sup> A register of deeds is also permitted to utilize an alternative indexing system for recording if they have adopted a system of microfilming or like process...<sup>4</sup> Additionally, an alternative

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<sup>1</sup> Wis. Stats. § 84.095(8)(b).

<sup>2</sup> See Wis. Stats. § 706.25 (providing for the electronic recording of documents and creating the Council to effectuate the purposes of the statute).

<sup>3</sup> Wis. Stats. § 59.43(1)(a).

<sup>4</sup> *Id.*

indexing system may be used when documents are maintained by, “electronic formatting under ch. 228.”<sup>5</sup>

It is clear that for counties that are subject to Chapter 228 there is no legal requirement for the TPP computer system to produce a volume and page number. Chapter 228 applies whenever a county’s population exceeds 500,000.<sup>6</sup> A county with a population of less than 500,000 can elect to be controlled by Chapter 228.<sup>7</sup>

Presumably, some counties with populations of less than 500,000 have not elected to be controlled by Chapter 228. For these counties the continued use of volumes and page numbers is arguably required.<sup>8</sup> However, the same statute administered by the Council also provides that a register of deeds may, “Receive, index, store, archive and transmit electronic documents.”<sup>9</sup> Additionally, a register of deeds may, “Provide for access to, and for search and retrieval of, documents and information by electronic means.” Arguably, these provisions permit registers of deeds to receive, maintain and index TPPs in an electronic format, even if the county has not elected to be controlled by Chapter 228. Resolution of the conflict is a matter of statutory interpretation.

The goal of statutory interpretation is to discern the intent of the legislature. The interpretation of statutes is guided by the rules of statutory construction. Although at times the rules can seem to conflict, generally, they provide sound guidance.

There are several rules of statutory construction that can be brought to bear. First, statutes on the same subject are read together,<sup>10</sup> and harmonized to avoid conflicts if at all possible.<sup>11</sup> Second, effect will be given to all provisions if possible.<sup>12</sup> Third, when two statutes conflict the more specific statute will control over the more general statute.<sup>13</sup> And fourth, since the legislature is presumed to have knowledge of its prior enactments, the more recent enactment will prevail where two statutes concern the same subject matter.<sup>14</sup>

Wisconsin Statutes § 706.25 was created after Wis. Stats. § 59.43 was last amended. The purpose of Wis. Stats. § 706.25 is to promote the electronic recording of documents. When enacting § 706.25 the legislature gave a specific grant of additional authority to registers of deeds to accomplish that purpose. To the extent that volume and page numbers are not a meaningful way to index documents stored in electronic format, it seems likely that § 706.25 controls.

To summarize, it is my opinion that Wis. Stats. § 706.25 accomplishes its intended purpose. By creating both the statute and the Council the legislature has evinced a clear intent to move the field of recording into electronic formats. I recommend that the Electronic Recording Council consider this matter and adopt a public position on the issue.

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<sup>5</sup> *Id.*

<sup>6</sup> Wis. Stats. § 228.01.

<sup>7</sup> Wis. Stats. § 228.07.

<sup>8</sup> Wis. Stats. § 59.43(1)(a).

<sup>9</sup> 706.25(3)(a)1.

<sup>10</sup> *Colby v. Columbia County*, 202 Wis.2d 342 (1996); *Parks v. City of Madison*, 199 Wis.2d 122 (Ct. App. 1995);

<sup>11</sup> *In re Estate of Flejter*, 240 Wis.2d 401 (Ct. App. 2000).

<sup>12</sup> *Matter of Plunkett*, 89 B.R. 776 (Bankr. E.D. Wis. 1988), *affrd.* 877 F.2d 512 (7<sup>th</sup> Cir. 1989).

<sup>13</sup> *Mayer v. Mayer*, 91 Wis.2d 342 (Ct. App. 1979).

<sup>14</sup> *Commercial Credit Corp. v. Schneider*, 265 Wis.2d 264 (1953).